

CITY OF HOUSTON

INTER OFFICE CORRESPONDENCE

TO: Police Officers'
Civil Service Commission
Of the City of Houston

FROM: Art Acevedo
Chief of Police

DATE: September 10, 2020

SUBJECT: **Indefinite Suspension**
Patrick T. Rubio,
Police Officer
Employee # [REDACTED]
Northeast Division
Issue #56011-2020

In accordance with the provisions of the TEX. LOC. GOV'T. CODE, Chapter 143 (formerly Art. 1269m), commonly known as the Fire Fighters' and Police Officers' Civil Service Act, you are hereby advised that as of the close of business on the date stated above, I have indefinitely suspended **Patrick T. Rubio, Police Officer**.

Patrick T. Rubio, Police Officer, has been indefinitely suspended for acts and conduct in violation of Rule V, Section 6, Subsections (b) and (k) of the City of Houston Police Officers' Civil Service Commission's (the "Commission") Rules Governing Members of the Houston Police Department (the "Department"), which reads as follows:

"SECTION 6 - CAUSES FOR REMOVAL OR SUSPENSION

"No classified employee shall engage in, or be involved in, any one of the following acts or conduct and the same shall constitute cause for the disciplinary or indefinite suspension of a classified employee:

"(b) violations of a municipal charter provisions;

"(k) violation of an applicable police department rule or special order."

Additionally, by his conduct, as detailed below, **Patrick T. Rubio, Police Officer**, has violated the Houston Police Department's General Orders. Compliance with the General Orders is required of all members of the Houston Police Department, and violation thereof is grounds for disciplinary action as provided in Rule V, Section 6, Subsection (k) of the Commission's Rules, quoted above.

The following facts serve as the basis for the indefinite suspension of Officer Rubio:

Investigation revealed that on April 21, 2020, at approximately 8:55 p.m., several Houston Police Department officers responded to the scene of a person in mental crisis who was later identified as Mr. N. Chavez, in a parking lot at or near the intersection of Gazin Street and the I-10 East

Freeway Service Road. Officer Patrick Rubio was one of the last officers to arrive on scene. Officer Rubio was assigned to the Northeast Patrol Division and was wearing a body worn camera (BWC) which he had activated in accordance with department policy.

Evidence from the investigation, including BWC video, showed that prior to Officer Rubio arriving on scene, Sergeant Benjamin Leblanc, Officer Luis Alvarado, Officer Omar Tapia and Officer Nancy Leija encountered Mr. Chavez positioned behind a light pole in a squatted position on the south side of the parking lot. Evidence from the investigation shows that after observing that Mr. Chavez had a metal object in his hand, Sergeant Leblanc went back to his vehicle and retrieved his beanbag shotgun. Sergeant Leblanc returned and instructed the officers to get their Conducted Energy Devices (CED) out to provide less lethal options. Sergeant Leblanc deployed four beanbag rounds and two officers discharged their CEDs two times at Mr. Chavez, none of which had any apparent effect.

Officer Rubio was monitoring the radio while on the scene of another call. After hearing dispatch notify of the use of a CED, Officer Rubio told Internal Affairs that *"I was like in my head, they found the guy and, you know, they ended up tasing him, and probably got into custody."* Soon thereafter, however, Officer Rubio heard Sergeant Leblanc on the radio and told Internal Affairs that his *"tone was in distress – like it – something was wrong. And which is a very scary thing to hear on the radio."* Officer Rubio stated that Sergeant Leblanc said *"Can we get some more units here? He's got a knife or something edged in his hand."* When he heard Sergeant Leblanc's call for assistance, Officer Rubio told Internal Affairs that *"at that point like, uh, I was like, I got to get over there."* Officer Rubio and his partner got into their patrol vehicle and followed *"literally a sea of blue and red lights"* that *"was just taking off down Homestead."*

While enroute to the scene, Officer Rubio heard Sergeant Leblanc announce over the radio that shots have been fired which caused *"a lot of things"* to start *"rushing through [Officer Rubio's] head."* Officer Rubio told Internal Affairs that *"like the last thing you ever want to hear on the radio, 'cause you don't know – especially when you're not there, you don't know what transpired, what's going on with Sergeant Leblanc, did he just get stabbed, did another officer get stabbed, are they like critically wounded?"* Evidence from the investigation shows that Sergeant Leblanc discharged his duty weapon at Mr. Chavez two times and a Harris County Constable Precinct 6 Deputy deployed his CED at the same time when Mr. Chavez advanced quickly at them with the metal object in his hand. After being shot and tased, Mr. Chavez fell into a shallow ditch in the northwest corner of the parking lot with officers surrounding Mr. Chavez on three sides. Before Officer Rubio arrived, Mr. Chavez remained in the ditch, noncompliant to verbal commands and continued stabbing himself with the metal object. Officer Rubio heard Sergeant Leblanc advising dispatch that Mr. Chavez was on the ground and still not complying. Officer Rubio estimated that it took him and his partner approximately 12 or 13 minutes to drive to the scene.

When Officer Rubio finally arrived at the scene, his BWC video shows that he parked a few blocks from the actual scene and that Officer Rubio took approximately fifty (50) seconds to run from where he parked his patrol vehicle to the active scene. When Officer Rubio got to the

active scene, he moved past multiple patrol vehicles, an HFD engine and numerous officers. Officer Rubio admitted to Internal Affairs that he thought his partner was behind him the whole time but could not recall where she ended up. Officer Rubio also admitted to Internal Affairs that he still did not know *"what's going on at this point, like is the scene over with? Is he in custody? Who's hurt? Like what's going on? What do I need to do on this scene to help everyone else out on it?"* An officer pointed in the direction of the ditch and told Officer Rubio that Mr. Chavez was still in it.

Despite his lack of awareness of the situation on scene, Officer Rubio proceeded directly to the end of a line of officers to the south of Mr. Chavez. Officer Rubio took a position next to a Chevrolet Tahoe police vehicle that was parked to the southeast of Mr. Chavez's location but did not use it for cover. Officer Rubio admitted to Internal Affairs that he did not receive any instruction from any supervisor to take that position on the line but did so because Officer Rubio *"saw a gap between the- the patrol vehicle and [the officers]. So I was like okay, let me go help out on the scene. I don't know what's - what's still is transpiring yet. Let me go fill this hole in case, you know, someone tries to run through it or, uh, just to be another person there in case they need help with either detaining someone or anything like that."*

As Officer Rubio took his position, his BWC video shows Mr. Chavez in the ditch in the northwest corner of the parking lot, rocking back and forth. Officer Rubio was told by another officer that Mr. Chavez had been stabbing himself with a knife and that Mr. Chavez still had the knife in his right hand. Officer Rubio's BWC video shows that Officer Rubio stood at his position for less than fifteen (15) seconds when Mr. Chavez suddenly yelled *"Fuck you,"* jumped to his feet and came out of the ditch in the direction of Officers Alvarado, Tapia, Leija, and Sergeant Reedy who were positioned in the parking lot south of Mr. Chavez. Evidence from the investigation, including BWC video, shows that Officer Kevin Nguyen, who was standing on the west side, discharged his duty weapon one time at Mr. Chavez. At the same time, Sergeant Michael Reedy, who took cover behind Sergeant LeBlanc's patrol vehicle, discharged his beanbag shotgun. Mr. Chavez fell to the ground and rolled over and up onto his knees.

After Mr. Chavez came out of the ditch, BWC video shows that Sergeant Reedy placed his beanbag shotgun on the ground and backed away from his position and the officers to the south standing next to Sergeant LeBlanc also backed up. Officer Rubio drew his duty weapon when Mr. Chavez came out of the ditch and shots were fired. Evidence from the investigation, including BWC video, shows that Sergeant Reedy and the officers then moved forward until Mr. Chavez crawled towards them a few feet causing the officers to back up again until Officer Rubio yelled *"stay line"* and the officers stopped. Officer Rubio told Internal Affairs that he was *"seven yards"* from Mr. Chavez after he came out of the ditch. Officer Rubio also estimated Sergeant Reedy to be *"closer than the 21 feet"* away from Mr. Chavez and *"behind the, uh, patrol vehicle on the other side of the - the hood."*

Evidence from the investigation, including BWC video, shows that after Mr. Chavez got up on his knees, he crawled forward a few feet, and looked around for several seconds and began to motion that he was going to throw the metal object at the officers. Sergeant LeBlanc began

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giving Mr. Chavez verbal commands not to throw the object. After looking around for several seconds, Mr. Chavez threw the metal object in the direction of the officers. Officer Rubio admitted to Internal Affairs that he took *"just that one step back when he threw the object at us, that was it. That was the only step back."*

After Mr. Chavez threw the metal object, he grabbed the wires of a CED that had already been deployed and was laying on the ground. Mr. Chavez started pulling the CED towards him. Evidence from the investigation showed that Sergeant LeBlanc stepped towards Mr. Chavez as he was pulling the wires and stated, *"Don't do it."* Evidence further shows that when Mr. Chavez obtained the empty CED in both of his hands, Sergeant LeBlanc, Officer Tapia, Officer Rubio, and Officer Alvarado discharged their duty weapons a total of twenty-one (21) times at Mr. Chavez, fatally wounding him. Officer Rubio discharged his firearm six (6) times at Mr. Chavez.

The Houston Police Department places the highest value on the life and safety of its employees and members of the community. The Houston Police Department's "Use of Force" policy provides that employees must use only the amount of force reasonably necessary to protect themselves or others to effect an arrest, or bring an incident under control, even if under the circumstances the law would allow the use of greater force. HPD policy requires that the "use of force must be objectively reasonable based on the totality of the circumstances." Additionally, HPD policy states that "the use of deadly force is limited to those circumstances in which officers reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death." Pursuant to HPD policy, "employees who use force against any person must detail the specific reasons for using such force."

In both my messages to cadets on their first day at the Training Academy and in my video message to the entire Department, I present the Department's general principles on the use of force and stress that deadly force should only be used when there is an imminent threat of serious bodily injury or death and when it is absolutely necessary. I emphasize that in handling critical incidents, the goal is for everyone, the officers, the suspects and citizens, to go home safely. To assist in achieving that goal, I discuss four tactics that an officer should use to his or her advantage to ensure the safe handling of an incident: time, distance, numbers, cover and concealment. If officers utilize these four tactics, as applicable and available to them under the totality of the circumstances, it will likely reduce the need to use force and ensure that any use of deadly force was necessary to protect themselves or others from the imminent threat of serious bodily injury or death.

Officer Rubio used deadly force against Mr. Chavez when he discharged his firearm at him six (6) times. As stated above, HPD policy mandates that Officer Rubio detail the specific reason why each of the six (6) discharges was necessary to protect Officer Rubio or others from the imminent threat of serious bodily injury or death. Officer Rubio was asked if he realized how many times he fired his weapon at Mr. Chavez after the incident happened and Officer Rubio responded, *"No sir."*

Officer Rubio had been on the scene, including his run to the scene, for approximately one-minute and forty (40) seconds before he discharged his firearm six (6) times at Mr. Chavez. Officer Rubio told Internal Affairs that he "*perceived*" that he and the other officers were within the effective range of the CED, and detailed his specific reasons for his use of deadly force against Mr. Chavez as follows: "*Like I said, he just grabbed it and he just made the motion, he was coming up with it. And that's when I - I - that's when I fired my - my service pistol. Um, cause I - I'm not gonna wait 'til he's - has it pointed at me directly and wait for me to get shot in the face with the taser or another officer there to get shot with the taser.*" Evidence from the investigation, including BWC video and Officer Rubio's own statements, establish that Officer Rubio's use of deadly force was neither objectively reasonable nor necessary to protect Officer Rubio or any other officer from the imminent threat of serious bodily injury or death.

Evidence from the investigation establishes the following circumstances existed during this incident. At the time that Officer Rubio used deadly force against Mr. Chavez, there were approximately 28 officers, deputies, and sergeants on the scene of this incident. Prior to Officer Rubio's decision to use deadly force against Mr. Chavez, Mr. Chavez was seriously injured from being shot by firearm, struck by beanbag rounds, tased and stunned by CED and multiple self-inflicted stab wounds. Prior to his arrival on scene, Officer Rubio heard over the radio that beanbag rounds and CEDs had been deployed against Mr. Chavez and that shots were fired. While no officer on the scene may have been fully aware of all of the prior uses of force, less lethal or deadly, that were used against Mr. Chavez or their effect, the evidence clearly establishes that prior to Officer Rubio's use of deadly force that Mr. Chavez was bleeding heavily and had at best limited mobility having spent the last 10 minutes of the incident inside a ditch either on his back or on his knees. Additionally, the evidence shows that after the firearm discharge by Officer Nguyen and the simultaneous beanbag discharge from Sergeant Reedy, Mr. Chavez appeared to only be able to crawl on his knees.

Given the totality of the circumstances described above, Officer Rubio's use of deadly force against Mr. Chavez is not objectively reasonable. First, the evidence establishes that the CED obtained by Mr. Chavez did not pose an imminent threat of serious bodily injury or death to Officer Rubio or the other officers. As admitted by Officer Rubio, Mr. Chavez obtained the deployed and discarded CED by pulling its wires to him. Officer Rubio told Internal Affairs that he "*was perceiving the - the taser to still have one active cartridge in it,*" and believed that he and the other officers were approximately 7 yards or 21 feet from Mr. Chavez when Mr. Chavez obtained the CED, which would have been within the effective range of the CED. Evidence from the investigation, however, establishes that the CED was fully deployed by Officer Leija and placed on the ground by her to prevent Officer Tapia from tripping over the wires. The CED remained on the ground for an additional 10 minutes without any officer, including Officer Rubio, picking it up or determining if it had a dart in it. Additionally, evidence from the investigation also establishes that only Sergeant Reedy was within the effective range of the CED and he was behind the cover of a patrol vehicle. Despite being the closest in proximity to Mr. Chavez, Sergeant Reedy did not discharge his weapon when Mr. Chavez obtained the CED.

Additionally, a review of the totality of the circumstances, including all available options, make clear that Officer Rubio's use of deadly force was not necessary to protect anyone from an *imminent* threat of serious bodily injury or death as required by HPD policy. Officer Rubio estimated that the parking lot was large enough to hold 20 to 25 cars. Officer Rubio also told Internal Affairs that there was a fence approximately "five yards" behind him and the other officers but claimed that they could not back up to the fence because they "had to contain" Mr. Chavez and "stand our ground." Officer Rubio explained to Internal Affairs that "what I mean by stand by[sic]ground was meaning to, uh, scene – contain – contain your scene. 'Cause you cannot let him leave that scene 'cause you don't know what's he gonna do after the wards [sic]. Like, go arm [sic] another citizen, go shoot a citizen with that taser, you know, all kinds of things can happen." As detailed above, at the time of Officer Rubio's use of deadly force against Mr. Chavez, Mr. Chavez was seriously injured and had limited mobility. Given Mr. Chavez' physical condition and the fact that there were approximately 28 officers on the scene, Officer Rubio's belief that he could not create distance due to his need to "contain the scene" is not objectively reasonable.

Officer Rubio failed to utilize the five yards of distance that he estimated was behind him when Mr. Chavez initially came out of the ditch. Utilizing the five yards behind him would have allowed Officer Rubio, who admittedly was already seven yards away from Mr. Chavez when Mr. Chavez obtained the CED, to remove himself from the effective range of the CED. Additionally, evidence from the investigation, including BWC video, establishes that Officer Rubio could have utilized the area in the parking lot around him to remove himself from what Officer Rubio believed to be the effective range of the CED. Officer Rubio admitted that he did take one step back when Mr. Chavez threw the metal object at the officers. Yet, when a seriously injured Mr. Chavez is pulling in an empty CED while on his knees, Officer Rubio chose to use deadly force against him rather than create distance. Again, given the number of officers on the scene, Mr. Chavez's physical condition and the amount of space available in the parking lot, Officer Rubio's decision to use deadly force against Mr. Chavez rather than create distance is not objectively reasonable under the totality of the circumstances.

In addition to failing to create distance, Officer Rubio also failed to utilize the cover and concealment that was available to him and the officers on the scene. Officer Tapia, who was also on the line with Officer Rubio, admitted to Internal Affairs that the officers could have used either of the two patrol vehicles nearby on the scene to protect themselves from the CED if necessary. In fact, Sergeant Reedy did utilize the patrol vehicle to the officers' left for cover and concealment and did not discharge his weapon when Mr. Chavez obtained the CED. When Officer Rubio arrived on scene, he admittedly proceeded to fill "a gap" between the officers and a Chevrolet Tahoe patrol vehicle. Despite Officer Rubio's close proximity to the patrol vehicle, Officer Rubio fails to use it for cover and concealment. Rather, when a seriously injured Mr. Chavez is pulling in an empty CED while on his knees, Officer Rubio failed to take cover and concealment behind the nearby patrol vehicle and instead chose to use deadly force against Mr. Chavez.

Officer Rubio was asked by Internal Affairs if he could have done anything differently and Officer Rubio responded, *"No sir. Not that I - just seemed like everything that happened was based off training. Training kicked in and everything that transpired was - was obviously his actions. Um, and there was nothin' more that we could have done."* Officer Rubio's failure to identify other options and acknowledge how his use of deadly force could have been avoided is concerning to me. Officer Rubio admitted to Internal Affairs that he recalled my message to his cadet class at the Academy regarding the importance of utilizing time, distance, numbers, and cover and concealment to ensure that everyone comes home safely. Yet, when any one of these options could have been utilized to eliminate any imminent threat that Officer Rubio may have perceived was posed by the CED and create more time for the safe handling of this incident, Officer Rubio instead inexplicably used deadly force against Mr. Chavez in violation of HPD policy.

In sum, the evidence from the investigation, including BWC video and Officer Rubio's own statements, clearly establish that his use of deadly force was not objectively reasonable under the totality of the circumstances, including but not limited to the number of officers on the scene, Mr. Chavez' physical condition, position, threat to and distance from the officers, the available space in the parking lot, and the available cover and concealment. Further, Officer Rubio's use of deadly force was not necessary to protect either himself or others from the imminent threat of serious bodily injury or death. Therefore, Officer Rubio violated HPD's "Use of Force" policy.

Further, Officer Rubio failed to use sound judgment and his actions, from his response to the call through his objectively unreasonable use of deadly force, were neither reasonable nor prudent. Officer Rubio admitted that he followed *"literally a sea of blue and red lights"* and drove at a high rate of speed for 12 or 13 minutes looking for the location without knowing what had transpired at the scene. As Officer Rubio repeatedly admitted to Internal Affairs, he *"still did not know what was going on"* on his arrival on scene. Officer Rubio also admitted that he *"perceived"* Sergeant Leblanc to be in charge at the scene. Yet, Officer Rubio literally runs past numerous patrol vehicles and officers and heads straight to the line of officers in closest proximity to Mr. Chavez without receiving any instructions from Sergeant Leblanc or any supervisor at the scene. Officer Rubio's lack of sound judgment contributed to his decision to use deadly force against at Mr. Chavez despite being on the scene less than two minutes.

The General Orders violated by Officer Rubio are as follows: 200-08 – Conduct and Authority and 600-17 – Use of Force. Officer Rubio was previously furnished copies of these General Orders.

GENERAL ORDERS

Conduct and Authority, Order No. 200-08, dated May 9, 2019, states in part, but is not limited to:

1 CONDUCT AND BEHAVIOR

SOUND JUDGMENT

Employees are expected to exercise sound judgment at all times. Employees' behavior shall be limited to conduct that is reasonable and prudent. No employee shall commit any act on or off duty in an official or private capacity that may bring reproach, discredit, or embarrassment to the department.

Use of Force, Order No. 600-17, dated September 30, 2015, states in part, but is not limited to:

1 GENERAL USE OF FORCE PRINCIPLES

Use of force must be objectively reasonable based on the totality of the circumstances. The circumstances justifying the initial use of force may change during the course of an event. It is the duty of all employees to constantly assess the situation and adjust the use of force accordingly. Employees who use force against any person must detail the specific reasons for using such force.

Employees are authorized by law to use force to protect themselves or others, to effect an arrest, or to maintain custody of those arrested. When dealing with members of the community, suspects, or prisoners, employees must use only the amount of force reasonably necessary to protect themselves or others, to effect an arrest, or to bring an incident under control, even if under the circumstances the law would allow the use of greater force.

5 USE OF DEADLY FORCE

The use of deadly force shall be limited to those circumstances in which officers reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death. Officers shall consider their immediate surroundings and the safety of uninvolved persons before using deadly force.

Pursuant to all applicable statutory and case law, on September 2, 2020, Officer Rubio was given an opportunity to meet and explain the above events to me at his Disciplinary Review Hearing ("DRH"). At his DRH, Officer Rubio read a prepared statement and respectfully advised that he would not answer questions from me or his chain of command. In his prepared statement, Officer Rubio told me that he believed that he acted in accordance with his "*training, HPD policy, sound judgment and common sense*" under the "*circumstances present*" and the "*changing dynamics at the scene.*" At his DRH, Officer Rubio further stated that he believed that it "*should be obvious*" to anyone reviewing the BWC video that "all the officers at the scene wanted this incident to end peacefully."

It was not "*obvious*" to me that any of the actions taken by Officer Rubio during his less than two minutes on the scene of this incident were in accordance with his "*training, HPD policy, sound judgment and common sense.*" Rather, what was "*obvious*" to his chain of command and

me from watching Officer Rubio's BWC video of this incident is that despite the fact that Officer Rubio was one of the last of the approximately 28 officers who responded to this incident, and despite his admitted lack of situational awareness, Officer Rubio chose to place himself in line with officers in closest proximity to Mr. Chavez, drew his weapon and used deadly force against Mr. Chavez within less than two minutes of arriving on scene. Officer Rubio's decision to use deadly force against Mr. Chavez rather than create distance or take available cover is not objectively reasonable under the totality of the circumstances.

It is the duty of all employees to continuously assess the situation and to adjust their tactics and force options accordingly. Officer Rubio's statement to Internal Affairs that "*there was nothin' more that we could have done*" is not consistent with HPD policy or training. Further, his belief that his only option when Mr. Chavez was pulling the wires of the CED toward him was to discharge his firearm six times at Mr. Chavez is not objectively reasonable under the totality of the circumstances. Officer Rubio did not and cannot credibly explain to his chain of command and me how the CED posed an imminent threat of serious bodily injury or death to him or the other officers given Mr. Chavez's physical condition, the number of officers on scene and the distance of the officers from Mr. Chavez. Nor can Officer Rubio explain why, if he believed that the CED posed an imminent threat of serious bodily injury or death once obtained by Mr. Chavez, he failed to utilize any of the other readily available options. Contrary to his prepared statement, Officer Rubio's actions were neither reasonable nor prudent and did not comply with HPD's "Use of Force" policy.

Further, Officer Rubio's conclusory statement at his DRH that "*it was Mr. Chavez's own actions that compelled the use of deadly force*" is extremely concerning given the facts and circumstances detailed above. For Officer Rubio to state that he was "*compelled*" to use deadly force against Mr. Chavez totally contradicts the mandate of the Houston Police Department and of policing in general to uphold the fundamental guiding principle to protect and preserve the sanctity of life. Officer Rubio's use of deadly force was not objectively reasonable under the totality of the circumstances nor was it necessary to protect himself or others from the imminent threat of serious bodily injury or death. If an officer's use of deadly force is determined not to be objectively reasonable under the totality of the circumstances in violation of HPD policy, indefinite suspension is mandated and is why it is the unanimous decision of the chain of command.

I have also considered Officer Rubio's disciplinary history, work record, and history in the Houston Police Department in determining the severity of discipline. Officer Rubio is hereby reminded of his right to appeal my decision and is informed that he has 15 days after receipt of a copy of this memorandum within which to file a written appeal to the Police Officers' Civil Service Commission, located at 611 Walker, 4th Floor, Houston, Texas 77002. Officer Rubio is informed that pursuant to Section 143.1016 of the Texas Local Government Code, he may elect to appeal to an independent third party hearing examiner instead of to the Commission. If Officer Rubio elects to appeal to an independent third party hearing examiner, he waives all rights of appeal to a district court except as provided by Subsection (j) of Section 143.1016 of the Texas Local Government Code.

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Art Acevedo
Chief of Police

aa:djt

cc: Patrick T. Rubio
Police Officer

MC/653K